U.S. Department of Labor

Office of Administrative Law Judges
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DATE ISSUED: July 27, 2000

CASE NO.: 2000-ERA-19

In the Matter of

GERALD SCHLENKER,
Complainant

v.

UNIVERSITY OF KENTUCKY,
Respondent

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT AND
DISMISSING COMPLAINT WITH PREJUDICE

This proceeding arising under the Energy Reorganization Act, 42 U.S.C. 5851, and its implementing regulations found at 20 C.F.R. Part 24. Complainant filed a complaint on April 26, 1999, alleging that the respondent retaliated against him for engaging in protected activity. A compliance investigation was conducted by the Atlanta, Georgia, Occupational Safety and Health Administration, (OSHA). On March 15, 2000, OSHA announced its determination that the complainant had engaged in protected activity. However, OSHA found that the evidence did not substantiate that Respondent's managerial personnel were aware of any such engagement in protected activities under the Act at the time they initiated any job action against him. By letter dated March 23, 2000, Claimant sought a hearing before an administrative law judge.

I was assigned the matter on March 28, 2000 and issued a Notice of Hearing on April 7, 2000, scheduling a hearing for June 27, 2000. On June 20, 2000, Attorney for the complainant informed me that the case had been settled. I received the original executed settlement agreement on July 14, 2000 for approval.

The Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which rules are controlling in the absence of specific provision at Part 24.

Part 18.9 allows the parties in a proceeding before an administrative law judge to reach agreement on their own. 29 C.F.R. part 18.9(a)-(c). The parties must "notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action." 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty days if satisfied with the agreement's form and substance. 29 C.F.R. Part 18.9(d).

The Judge must review the settlement agreement to determine whether its terms are a fair, adequate and reasonable settlement of the complaint. *Bonanno v. Stone & Webster Engineering Corp.*, 97 ERA 33 (ARB 6-27-97). Moreover, review and approval of the settlement is limited to matters arising under the employee protection provisions under the jurisdiction of the Department of Labor, in this case the Energy Reorganization Act. *Mills v. Arizona Public Service Co.*, 92 ERA 13, (Sec'y Jan. 23, 1992); *Anderson v. Kaiser Engineers Hanford Co.*, 94 ERA 14 (Sec'y Oct. 21, 1994).

The parties have included language in the agreement to the effect that Respondent denies any violations and that nothing in the agreement should be construed as an admission of liability or a violation of the ERA or other state, local or federal laws. The parties agree that the agreement does not constitute an adjudication or finding on the merits. This recommended decision and order shall not be construed as indicating my view on the merits of this entire matter. The complainant agrees to a general release of all claims against the University arising out of employment or contractual relationship with the University.

I interpret the language of the agreement regarding waiver of complainant's rights as limited to a waiver of complainant's right to sue in the future on claims or causes of actions arising out of facts occurring before the date of the settlement. *See, Tan v. Deborah Research Institute,* 94-ERA-31 (Sec'y Nov. 28, 1994), *Bittner v. Fuel Economy Contracting Co.,* 88-ERA-22 (Sec'y June 28, 1990); *Polizzi v. Gibbs & Hill, Inc*., 87-ERA-38 (Sec'y July 18, 1989); *Ryan v. Niagara Mohawk Power Corp.*, 87-ERA-47 (Sec'y Jan. 25, 1990).

I am concerned with the following language: "This release includes, but is not limited to, all claims as to all parties in the claim originally filed with the United States Department of Labor, Occupational Safety and Health Administration..." The language may be superfluous because Mr. Schlenker has agreed not to sue the Respondents, in nearly any and all of its possible forms, on the released claim. If the meaning of the words "all claims as to all parties" merely referred to Mr. Schlenker's released claim during the same time period, the language would be acceptable. However, if the language refers to claims which others may have, it is inappropriate. I limit the language as to a release of complainant's claims against the respondent arising out of the facts occurring before the date of the settlement.

I find the Settlement Agreement to be fair, adequate and reasonable settlement of the complaint.

Accordingly, it is hereby RECOMMENDED that the Settlement Agreement between Complainant Gerald Schlenker and the University of Kentucky, be APPROVED and that the matter be DISMISSED WITH PREJUDICE.

RICHARD A. MORGAN
Administrative Law Judge

RAM:dmr

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See 29* C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).